IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

Crl.MC.No. 4076 of 2006()

CC.496/2003 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER: ACCUSED

GEORGE SAMUEL,
S/O.GEORGE,
VALIYAPARAMBIL HOUSE,
MAMKAMKUZHY.P.O,
VETTIYAR VILLAGE.

BY ADV. SRI.R.REJI
SMT.C.A.AJITHA SALAM

RESPONDENTS: COMPLAINANT AND STATE

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1. STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SIVARAMAN,
MINI VIHAR,
MANKAMKUZHY.P.O,
VETTIYAR VILLAGE.

BY PUBLIC PROSECUTOR SRI.KAMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.4076 OF 2006

Dated this the 19th day of December, 2006.

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. When the complainant was examined in chief, the complainant was not properly cross examined, it is submitted. Long later, at the defence stage, the petitioner filed an application to recall PW1 for cross examination. The learned Magistrate by the impugned order, a copy of which is produced as Annexure-A5, dismissed the application. The reasons are given in the following words in Annexure-A5.

> "In the deposition of PW1 it is recorded by my learned Predecessor that defence counsel had refused cross examine the witness because she was not allowed to put unnecessary questions to him. Later T.P was moved before C.J.M and that was dismissed.
>
> So in this context accused has no locus standi to move this petition to re cross PW1.
>
> So petition is rejected."

2. The learned counsel for the petitioner submits that the rejection of his prayer for permission to cross examine PW1 is most unjustified. The said order is seen passed on 28.09.2006. On specific query from this Court, the counsel submits that the matter stands posted for hearing and disposal tomorrow.

3. I do not want to express any opinion about the challenge raised against Annexure-A5 order. I am satisfied that, at any rate, it is not necessary for this Court now to invoke the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C to quash Annexure-A5 order.

4. In the result, this Crl.M.C is, dismissed. I may hasten to observe that the petitioner's right to challenge Annexure-A5 order later along with the final order to be passed in C.C.No.496 of 2003, if necessary, shall remain unfettered by the dismissal of this Crl.M.C.

R.BASANT
JUDGE

rtr/